ELECTIONS — ELIGIBILITY OF JUDGE FOR NOMINATION TO OFFICE BEGINNING AFTER HIS TERM. — A judge while holding office was nominated for governor, the term to begin two days after his term as judge expired. The state constitution made a judge ineligible for any other public office during the term for which he was elected. *Held*, that the nomination is void. *State ex rel. Reynolds* v. *Howell*, 126 Pac. 954 (Wash.).

About half the courts construe the word "ineligible" to mean unqualified for nomination to office. *Demaree* v. *Scates*, 50 Kan. 275, 32 Pac. 1123; *Smith* v. *Moore*, 90 Ind. 294; *State ex rel. Taylor* v. *Sullivan*, 45 Minn. 309, 47 N. W. 802. As there is no fixed legal meaning, the ordinary meaning should be regarded. LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION, § 390. It would seem that the ordinary meaning is incompetency for office. Even a court requiring competency for nomination would also require a competency at the time of taking office. If only those over thirty are eligible for a given office, this surely would not prevent a man of twenty-nine from running for it if his thirtieth birthday would come before the date of taking office. It may be argued that public policy opposes a judge running for office. But such reasoning would only apply if there was clearly ambiguity in the words, when it might be used to show the meaning which must have been intended by the makers. The meaning of eligibility, however, seems unambiguous. Competency for office may properly include a requirement of an ability at the time of nomination to be competent for a position when the time arrives. The term of office of a judge under the Washington constitution continues until his successor is elected and qualified. WASH. CONST., Art. 4, § 5. The two terms, therefore, might overlap. As the defendant cannot regulate this circumstance, he is not legally competent for the office of governor until that chance is settled.

EVIDENCE — REAL EVIDENCE — PHYSICAL EXAMINATION OF PLAINTIFF IN PERSONAL INJURY SUIT. — In an action for malpractice based upon two separate operations the plaintiff voluntarily exhibited a portion of her body upon which one of the operations was performed. The defendant requested that he be permitted through his physicians to examine the other part operated on. *Held*, that it was error to refuse this request. *Booth* v. *Andreas*, 137 N. W. 884 (Neb.).

It is held by the weight of authority that a court has discretionary power to compel one suing for physical injuries to exhibit the injured part of his body, on the ground that any right to personal immunity is subject to the demands of justice. *Schroeder* v. *Chicago, R. I. & P. Ry. Co.*, 47 Ia. 375; *Richmond & D. Ry. Co.* v. *Childress*, 82 Ga. 719, 9 S. E. 602. See 4 WIGMORE, EVIDENCE, § 2220. *Contra*, *Union Pacific* v. *Botsford*, 141 U. S. 250, 11 Sup. Ct. 1000. But even in jurisdictions not ordinarily compelling such exhibition it is held that when the plaintiff has voluntarily exhibited his injury his right to immunity is to that extent waived. *Chicago, R. I. & T. Ry. Co.* v. *Langston*, 19 Tex. Civ. App. 568, 47 S. W. 1027; *Winner* v. *Lathrop*, 67 Hun (N. Y.) 511, 22 N. Y. Supp. 516. This waiver would not seem properly to extend to an injury distinct from that which had been voluntarily exhibited. The principal case in effect holds that these injuries were in fact a single transaction. See NEB. CIV. CODE, § 339.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — RIGHT OF AN EXECUTOR TO PLEAD STATUTE OF LIMITATIONS TO HIS PERSONAL DEBT TO THE ESTATE. — Petitions were filed against the defendants as executors of an estate, alleging that debts from them due to the testator had not been listed. The defendants were refused leave to amend by pleading that the Statute of Limitations had run before the testator's death, and an appeal

was taken. *Held*, that the appeal be dismissed. *Long* v. *Long*, 84 Atl. 375 (Md.).

The appeal in the principal case was prematurely brought, but the court laid down the rule that an executor can never plead the Statute of Limitations to his own debts to the estate. Such broad language appears in one other case. *Thompson* v. *Thompson*, 77 Ga. 692, 3 S. E. 261. But there it is probable, and in the cases it cites it is clear, that the statute had not run at the testator's death. *Ingle* v. *Richards*, 28 Beav. 366; *Juillard* v. *Orem's Ex'rs*, 70 Md. 465, 17 Atl. 333. Where the statute had run before the testator's death it has been assumed that it could be pleaded. *Haines* v. *Haines' Ex'rs*, 15 Atl. 839 (N. J.). The theory of the cases is that equity presumes that to be done which should be done, and considers the debts turned into assets in the executor's hands. *Tarbell* v. *Jewett*, 129 Mass. 457. See 23 HARV. L. REV. 391. A court influenced by the old dislike of the Statute of Limitations might even hold a debt already barred to be assets. But to-day this dislike seems to have passed. See *Pritchard* v. *Howell*, 1 Wis. 131, 136; *Campbell* v. *Haverhill*, 155 U. S. 610, 617, 15 Sup. Ct. 217, 220. Furthermore, the evidence as to the original debt in the principal case would be more than six years old, a condition which the statute is designed to prevent. It is submitted that a rule of equity giving to legatees the same rights as the testatorshould not be construed to give them greater rights.

EXEMPLARY DAMAGES — EVIDENCE OF DEFENDANT'S WEALTH. — In an action of assault and battery, to aid the jury in assessing punitive damages the plaintiff offered evidence tending to show the defendant's reputed wealth. *Held*, that such evidence is admissible. *Bogue* v. *Gunderson*, 137 N. W. 595 (S. D.).

The assessing of punitive damages over and above that claimed by way of compensation has been very generally adopted, "for the sake of example, and by way of punishing the defendant." S. D., REV. CIV. CODE, § 2292; *Stimpson* v. *Rail Roads*, 1 Wallace, Jr., 164; *Grable* v. *Margrave*, 4 Ill. 372. The great weight of authority holds that evidence of the defendant's wealth is admissible in determining such damages. *Greeneberg* v. *Western Turf Association*, 140 Cal. 357, 73 Pac. 1050; *Pullman Palace Car Co.* v. *Lawrence*, 74 Miss. 782, 22 So. 53. Unfair discrimination against wealth naturally suggests itself as an argument against this result. But, since the object is to inflict on the particular defendant punishment of a desired degree of stringency, proportioning the fine to his income is obviously desirable. Penal statutes make no such discrimination, but it cannot be doubted that judges, in assessing fines, often consider the wealth of the defendant. The dissenting cases are also influenced by the fear of diverting the attention of juries from the nature of the act and of unfairly privileging insolvent defendants. *Givens* v. *Berkley*, 108 Ky. 236, 56 S. W. 158; *Southern Car & Foundry Co.* v. *Adams*, 131 Ala. 147, 32 So. 503. But such a danger should only exclude evidence when its relevancy is small. In the principal case, compensation being no longer in question, the issue has narrowed into what assessment upon the wealth of the particular defendant will best effect present punishment and future example.

FEDERAL COURTS — JURISDICTION — ENJOINING PROCEEDINGS IN STATE COURTS. — The plaintiff gas company sued in the federal courts to enjoin the enforcement of an unconstitutional ordinance, imposing a fine for failure to maintain a certain pressure. During the pendency of this suit, the city began proceedings in the state courts to compel the plaintiff to lower its rates. *Held*, that the city will not be enjoined by the federal court from proceeding in the state courts. *Kansas City Gas Co.* v. *Kansas City*, 198 Fed. 500 (Dist. Ct., W. D. Mo.).

The statute prohibiting a federal court from enjoining suits in state courts